

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-20 are currently pending. Claims 1, 8, 18, and 19 have been amended by the present amendment. The changes to the claims are supported by the originally filed specification and do not add new matter.

In the outstanding Office Action, Claims 1, 5-8, and 11-20 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 20, 24-27, and 30-39 of co-pending Application No. 11/389,262; and Claims 1-7 and 18 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims in U.S. Patent No. 7,120,674; and Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,212,160 to Barbieri et al. (hereinafter “the ‘160 patent”) in view of U.S. Patent No. 5,818,603 to Motoyama (hereinafter “the ‘603 patent”) and U.S. Patent No. 6,134,680 to Yeomans (hereinafter “the ‘680 patent”).

Applicants respectfully submit that the double-patenting rejection of the claims with respect to Application No. 11/389,262 is rendered moot by the Terminal Disclaimer filed herewith.

Applicants respectfully submit that the double-patenting rejection of the claims with respect to U.S. Patent No. 7,120,674 is rendered moot by the Terminal Disclaimer filed herewith.

Amended Claim 18 is directed to a computer-implemented method for causing at least one of a device, an appliance, an application, and an application unit to control a protocol used for data communication to a remote receiver, the method comprising: (1) providing plural application-layer communications protocols for transferring data; (2) selecting a first

protocol among the plural application-layer communication protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (3) selecting a second protocol among the plural application-layer communications protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (4) collecting events at the at least one of a device, an appliance, an application, and an application unit; (5) performing a first attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the first selected protocol; and (6) performing a second attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second selected protocol regardless of whether the first attempt was successful, automatically without human intervention. The changes to Claim 18 are supported by the originally filed specification and do not add new matter. Moreover, Applicants note that Claim 18 has been amended for the purpose of clarification only and that the scope of Claim 18 has not changed. In particular, Applicants note that the claims recite a step of performing a first attempt to transfer the collected events, and a step of performing a second attempt to transfer the collected events. Thus, Claim 18 requires that two attempts to transfer the collected events be performed. Accordingly, it follows that the second step of performing a second attempt to transfer the collected events will be performed regardless of whether the first attempt was successful, as recited in amended Claim 18.

Regarding the rejection of Claim 18 under 35 U.S.C. § 103(a), the Office Action asserts that the ‘160 patent discloses everything in Claim 18 with the exception of selecting an application-layer protocol and the collection and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit, and relies on the ‘603 and ‘680 patents to remedy those deficiencies.

The ‘160 patent is directed to a method of automatically selecting a protocol to match the protocol of a communication network. In particular, the ‘160 patent discloses that a device initially attempts to communicate by using a preferred one of the communication protocols and attempts to communicate by using another one of the protocols if the initial attempt fails.

However, as admitted in the outstanding Office Action, the ‘160 patent fails to disclose the step of providing plural application-layer communication protocols for transferring data. Moreover, Applicants respectfully submit that the ‘160 patent fails to disclose the step of selecting a first protocol among the plural application-layer communication protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit, as recited in Claim 18. Since the ‘160 patent does not disclose application-layer protocols, it cannot disclose selecting a first protocol among the plural application-layer communication protocols. Moreover, the ‘160 patent discloses that “the application first attempts … to establish a communications channel by using the preferred protocol.”¹ Thus, the ‘160 patent does not disclose that a protocol is selected among plural protocols, as required by Claim 18.

The ‘603 patent is directed to a method and system for controlling and communicating with machines using multiple communication formats. The ‘603 patent discloses that, after information is transmitted from a first device to a second device and upon receiving the information, the second device determines a communication protocol utilized by the first device by looking up an identifier contained within the information to determine a format of a header of the transmission. Further, the ‘603 patent discloses that the second device then parses the header of the transmission used in the format of the header which was determined, and determines the communication protocol using information in the header

¹ See ‘160 patent, Abstract. Emphasis added.

which was parsed using the format of the header. However, Applicants respectfully submit that the '603 patent fails to disclose providing plural application-layer protocols for transferring data, performing a first attempt to transfer collected events using the first selected protocol, and performing a second attempt to transfer the collected events using the selected protocol regardless of whether the first attempt was successful, automatically without human intervention, as required by Claim 18.

The '680 patent is directed to an error handler for a proxy server computer system that receives a universal resource locator (URL) from a remote user terminal, automatically modifies the universal resource locator in response to a detection of a failure by an accessing means to access a data file on the server, and returns data indicating the error and offering remedial options to the user. As shown in the flowcharts of Figures 5 and 6, the '680 patent discloses that, in step 470, when no response has been received from the server, the error handler tries to reach the URL via alternative protocols, e.g., echo or ftp, stored in the protocol store 560. Further, the '680 patent discloses that, if contact is made with the URL via one or more alternative protocols, the error handler sends a text message back to the browser for display to the user listing the available protocols for contacting the website as hyperlink text, from which the user can select an alternative destination for the WWW page request.² Thus, as shown in step 500 in Figure 6, the '680 patent discloses that if contact can be made with the server using the alternative protocol, the user is provided with options as to how they wish to proceed.

Thus, Applicants respectfully submit that the '680 patent fails to disclose the step of performing a second attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second selected protocol regardless of whether the first attempt was successful, automatically

² '680 patent, column 6, lines 44-62.

without human intervention. Rather, the ‘680 patent discloses that human intervention is necessary before a second attempt to transfer data is performed. Further, the ‘680 patent discloses that the second attempt, which requires human intervention, is only performed if there is a failure in the first attempt to retrieve data. Further, Applicants respectfully submit that the ‘680 patent fails to disclose the step of *selecting* a first protocol among the plural application-layer communication protocols, as recited in Claim 18. Rather, the ‘680 patent discloses that HTTP is always used to retrieve the webpage with the first attempt.

Thus, no matter how the teachings of the ‘160, ‘603, and ‘680 patents are combined, the combination does not teach or suggest the first selecting step and the second performing step recited in amended Claim 18. Accordingly, Applicants respectfully traverse the rejection of Claim 18 under 35 U.S.C. § 103.

Independent Claims 1, 8, and 19 recite limitations analogous to the limitations recited in Claim 18. Moreover, Claims 1, 8, and 19 have been amended in a manner analogous to the amendment to Claim 18. In particular, Applicants note that Claim 8 recites a first computer code device configured to provide plural application-layer communication formats for providing data transfer; a fifth computer code device configured to attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using a first selected format; and a sixth computer code device configured to attempt to transfer the collected events to the remote receiver using the second selected format regardless of whether the attempt to transfer the collected events to the remote receiver using the first format was successful, automatically without human intervention. However, Applicants respectfully submit that the combined teachings of the ‘603, ‘160, and ‘680 patents fail to disclose the second computer code device and the sixth computer code device recited in Claim 8. In particular, Applicant notes that the ‘160 patent is directed to various transport level protocols, but not plural application-layer formats, as

recited in Claim 8. Accordingly, Applicants respectfully traverse the rejection of Claims 1, 8, and 19 under 35 U.S.C. § 103.

Thus, it is respectfully submitted that independent Claims 1, 8, 18, and 19 (and all associated dependent claims) patentably define over any proper combination of the '603, '160, and '680 patents.

Consequently, in view of the present amendment and in light of the above discussion, the outstanding grounds for rejection are believed to have been overcome. The application as amended herewith is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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